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 RICHARD H. BICKING CLERK OF COURT
 U.S. DISTRICT COURT
 SAN FRANCISCO

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RS

6 UNITED STATES DISTRICT COURT,
 7 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CV 09

3582

8 HEIDI P. SPEARER,) Case No.:
 9 Plaintiff,)
 10) COMPLAINT AND DEMAND FOR
 11 FIRST NATIONAL COLLECTION) JURY TRIAL
 12 BUREAU, INC.,)
 13 Defendant.) (Unlawful Debt Collection Practices)

14

15 **VERIFIED COMPLAINT**

16 HEIDI P. SPEARER (Plaintiff), by her attorneys, KROHN & MOSS, LTD., alleges the
 17 following against FIRST NATIONAL COLLECTION BUREAU, INC., (Defendant):

18 **INTRODUCTION**

19 1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
 20 U.S.C. 1692 *et seq.* (FDCPA).

21 2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection
 22 Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).

23 **JURISDICTION AND VENUE**

24 3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such
 25 actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy," and 28 U.S.C. 1337 grants this court
2 supplemental jurisdiction over the state claims contained therein.

3 4. Defendant conducts business in the state of California, and therefore, personal
jurisdiction is established.
5 5. Venue is proper pursuant to 28 U.S.C. 1331(b)(2).
6 6. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

7 **PARTIES**

8 7. Plaintiff is a natural person residing in Union City, Alameda County, California.
9 8. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to
10 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5)
11 and *Cal. Civ. Code* § 1788.2(h).
12 9. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and *Cal. Civ.*
13 *Code* § 1788.2(c), and sought to collect a consumer debt from Plaintiff.
14 10. Defendant is a national company with its headquarters in Sparks, Washoe County,
15 Nevada.
16 11. Defendant acted through its agents, employees, officers, members, directors, heirs,
17 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
18 insurers.

19 **FACTUAL ALLEGATIONS**

20 12. Defendant constantly and continuously places collection calls to Plaintiff seeking and
21 demanding payment for an alleged debt owed by "Raj."
22 13. Plaintiff does not owe the debt.
23 14. Defendant leaves voicemail messages on Plaintiff's phone asking "Raj" to return the
24 call to 800-824-6191.
25 15. Plaintiff has repeatedly informed Defendant that they are contacting the wrong person

1 but Defendant continues to call despite this.

2 16. Defendant contacts Plaintiff at 510-477-0930.

3 17. Defendant calls Plaintiff from "blocked" telephone numbers.

4 18. Defendant calls Plaintiff and fails to provide meaningful disclosure of the caller's
5 identity.

6 19. Defendant calls Plaintiff and fails to disclose the call is from a debt collector.

7 20. Defendant did not send Plaintiff a debt validation letter.

8 **COUNT I**

9 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

10 21. Defendant violated the FDCPA based on the following:

11 a. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring
12 repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.

13 b. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without
14 meaningful disclosure of the caller's identity.

15 c. Defendant violated §1692e(2)(A) of the FDCPA by falsely representing the
16 character and amount of a debt because Plaintiff does not owe the debt alleged by
17 Defendant.

18 d. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an
19 attempt to collect a debt by continuing to place telephone calls to Plaintiff in an
20 attempt to collect a debt after being repeatedly informed that Defendant has the
21 wrong telephone number.

22 e. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an
23 attempt to collect a debt by placing collection calls to Plaintiff from "blocked"
24 numbers.

25 f. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an

1 attempt to collect a debt by placing collection calls to Plaintiff and failing to
2 provide meaningful disclosure of the caller's identity.

3 g. Defendant violated §1692e(11) of the FDCPA by failing to disclose in
4 subsequent communications that the communication was from a debt collector.
5 h. Defendant violated §1692g(a)(1-5) by failing to provide appropriate notice of the
6 debt within 5 days after the initial communication including: (1) the amount of
7 the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement
8 that unless the consumer, within 30 days after receipt of the notice, disputes the
9 validity of the debt, or any portion thereof, the debt will be assumed to be valid
10 by the debt collector; (4) a statement that if the consumer notifies the debt
11 collector in writing within the 30-day period that the debt, or any portion thereof,
12 is disputed, the debt collector will obtain verification of the debt or a copy of a
13 judgment against the consumer and a copy of such verification or judgment will
14 be mailed to the consumer by the debt collector; and (5) a statement that, upon
15 the consumer's written request within the 30-day period, the debt collector will
16 provide the consumer with the name and address of the original creditor, if
17 different from the current creditor.

18 22. As a direct and proximate result of one or more or all of the statutory violations above
19 Plaintiff has suffered emotional distress (see Exhibit A).

20 WHEREFORE, HEIDI P. SPEAKER, respectfully requests judgment be entered against
21 Defendant, FIRST NATIONAL COLLECTION BUREAU, INC., for the following:

22 23. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection
23 Practices Act,
24 24. Statutory damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,
25 25. Actual damages,

1 26. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
2 *15 U.S.C. 1692k*
3 27. Any other relief that this Honorable Court deems appropriate.

4 **COUNT II**
5 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**
6 **PRACTICES ACT**

7 28. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as
8 the allegations in Count II of Plaintiff's Complaint.
9 29. Defendant violated the RFDCPA based on the following:
10 a. Defendant violated §1788.11(b) of the RFDCPA by placing telephone calls
11 without meaningful disclosure of the caller's identity.
12 b. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone
13 to ring repeatedly and continuously so as to annoy Plaintiff.
14 c. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to
15 Plaintiff with such frequency that was unreasonable and constituted harassment.
16 d. Defendant violated the §1788.17 of the RFDCPA by continuously failing to
17 comply with the statutory regulations contained within the FDCPA, *15 U.S.C. §*
18 *1692 et seq.*

19 30. As a direct and proximate result of one or more or all of the statutory violations above
20 Plaintiff has suffered emotional distress (see Exhibit A).

21 WHEREFORE, Plaintiff, JESSICA ALLEE, respectfully requests judgment be entered
22 against Defendant, FIRST NATIONAL COLLECTION BUREAU, INC., for the following:

23 31. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt
24 Collection Practices Act,
25 32. Statutory damages pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal.*
Civ. Code §1788.30(b),

33. Actual damages,
34. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code § 1788.30(c)*, and
35. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, HEIDI P. SPEAKER, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: July 31, 2009

KROHN & MOSS, LTD

By:

G. Thomas Martin, III
Attorney for Plaintiff

1
VERIFICATION OF COMPLAINT AND CERTIFICATION

2 STATE OF CALIFORNIA

3 Plaintiff, HEIDI P. SPEARER, states as follows:

4 1. I am the Plaintiff in this civil proceeding.

5 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe
that all of the facts contained in it are true, to the best of my knowledge, information
and belief formed after reasonable inquiry.

6 3. I believe that this civil Complaint is well grounded in fact and warranted by existing
law or by a good faith argument for the extension, modification or reversal of existing
law.

7 4. I believe that this civil Complaint is not interposed for any improper purpose, such as
to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a
needless increase in the cost of litigation to any Defendant(s), named in the
Complaint.

8 5. I have filed this Complaint in good faith and solely for the purposes set forth in it.

9 6. Each and every exhibit I have provided to my attorneys which has been attached to
this Complaint is a true and correct copy of the original.

10 7. Except for clearly indicated redactions made by my attorneys where appropriate, I
have not altered, changed, modified or fabricated these exhibits, except that some of
the attached exhibits may contain some of my own handwritten notations.

11
12 Pursuant to 28 U.S.C. § 1746(2), I, HEIDI P. SPEARER, hereby declare (or certify,
13 verify or state) under penalty of perjury that the foregoing is true and correct.

14 DATE: 7-15-09

Heidi P. Spearer
15 HEIDI P. SPEARER

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EXHIBIT A

I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

1. Sleeplessness	<input checked="" type="checkbox"/> YES	NO
2. Fear of answering the telephone	<input checked="" type="checkbox"/> YES	NO
3. Nervousness	<input checked="" type="checkbox"/> YES	NO
4. Fear of answering the door	<input checked="" type="checkbox"/> YES	NO
5. Embarrassment when speaking with family or friends	<input checked="" type="checkbox"/> YES	NO
6. Depressions (sad, anxious, or "empty" moods)	<input checked="" type="checkbox"/> YES	NO
7. Chest pains	<input checked="" type="checkbox"/> YES	NO
8. Feelings of hopelessness, pessimism	<input checked="" type="checkbox"/> YES	NO
9. Feelings of guilt, worthlessness, helplessness	<input checked="" type="checkbox"/> YES	NO
10. Appetite and/or weight loss or overeating and weight gain	<input checked="" type="checkbox"/> YES	NO
11. Thoughts of death, suicide or suicide attempts	<input checked="" type="checkbox"/> YES	NO
12. Restlessness or irritability	<input checked="" type="checkbox"/> YES	NO
13. Headache, nausea, chronic pain or fatigue	<input checked="" type="checkbox"/> YES	NO
14. Negative impact on my job	<input checked="" type="checkbox"/> YES	NO
15. Negative impact on my relationships	<input checked="" type="checkbox"/> YES	NO

Other physical or emotional symptoms you believe are associated with abusive debt collection activities:

Anger, frustration that they kept calling even tho I explained several times that they had the wrong numbers AND requested they correct their records - they kept calling and calling: early morning was the worst - they often wake me up in the morning.

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 7-15-09

Heidi Speare
Signed Name

Heidi Speare
Printed Name